IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.4289 of 2006

Gattaram Sonaji Solanki
@ Chatia @ Dargiram Sonji Applicant

Vs.

State of Maharashtra Respondent

Mr.Ayyaz Khan for applicant.

Mrs.Aruna Pai, APP for Union of India.

CORAM: B.H.MARLAPALLE,J.

January 09, 2007.

P.C.

1. Heard the learned counsel for the applicant whose application for bail has been rejected by the learned Special Judge under the NDPS Act, Greater Mumbai on 13/11/2006. Hence this application praying for being released on bail. It appears, on perusal of the order dated 13/11/2006 that the learned Special Judge was under the impression that the investigation was in progress and releasing the applicant - accused would be nothing but depriving the investigating agency in completing the investigation to its fullest ability. On that ground

the learned Judge of the Special Court did not find that applicant was entitled to be released on bail.

2. The learned counsel for the applicant has invited my attention to the complaint filed by the Intelligence Officer before the NDPS Special Court in the month of September 2006 i.e. prior to the application for bail having been rejected. The said complaint has been filed on completion of the investigation and, therefore, it cannot be accepted that the investigation was in progress when the applicant's plea for bail was turned down on 13/11/2006.

3. Mrs.Pai, the learned APP has invited my attention to paragraph nos.15, 33, 35 and 41 of the complaint regarding the alleged involvement of the applicant in the import and sale of hashish in Mumbai city in the past. The learned counsel for the applicant also stated that the applicant has been discharged from C.R. No.45 of 2006 prior to the filing of the bail application before the Special Court but he is not able to place before this Court a copy of the said order and he stated that he does not remember the exact date on which the order was

passed.

4. All these issues including the allegations set out in the complaint and more specifically against the present applicant could be more efficaciously considered by the learned Special Judge under the NDPS Act and, therefore, the reason set out in the order dated 13/11/2006 that the investigation was in progress and the bail could not be granted is not well founded. The bail application (Bail Application No.161 of 2006 in NDPS R.A. No.87 of 2006) requires to be remanded to the learned Special Judge for being heard and decided afresh.

5. Hence the Bail Application No.161 of 2006 is restored to the file of the Special Court under the NDPS Act for Greater Mumbai and it is directed that the same shall be heard and decided afresh by taking into consideration the allegations as set out in the complaint and the order of discharge purportedly passed in favour of the applicant so far as C.R. No.45 of 2006 is concerned.

6. The application is disposed off in terms of the above directions. Needless to mention the bail

application on remand shall be heard and decided as expeditiously as possible and preferably within a period of four weeks from receipt of the writ from this Court.

(B.H